

FILED DATE - NOV 07 2022

Department of Health

By: 
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF MASSAGE THERAPY**

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2022-06213

License No.: MA 96204

DIEGO HOLGUIN CEPEDES,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MASSAGE THERAPY (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, at a duly-noticed meeting on October 27 and 28, 2022, in Orlando, Florida, for the purpose of considering a voluntary relinquishment of license (attached hereto as Exhibit B). Upon consideration of the Administrative Complaint (attached as exhibit A), the voluntary relinquishment, the documents submitted in support thereof, and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that the voluntary relinquishment is accepted as a resolution of this case.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 4th day of November, 2022.

BOARD OF MASSAGE THERAPY



Danielle Verrell
Executive Director for
CHRISTOPHER BROOKS, LMT
Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to: **DIEGO HOLGUIN CEPEDES**, 1504 Bay Road, Apt. 1623, Miami Beach, FL 33139; and 1250 Lincoln Road, Apt. 408, Miami Beach, FL 33139; and by e-mail to: **C/O Megan Blanco, Esq.**, meganblancholaw@gmail.com; **Dannie Hart**, Assistant General Counsel, Department of Health Dannie.Hart@flhealth.gov; and **Diane L. Guillemette**, Assistant Attorney General, Diane.Guillemette@myfloridalegal.com, this 7th day of November, 2022.



Deputy Agency Clerk

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.

**Ron DeSantis**

Governor

Joseph A. Ladapo, MD, PhD

State Surgeon General

Vision: To be the Healthiest State in the Nation

INTEROFFICE MEMORANDUM

DATE: Wednesday, November 2, 2022

TO: Janet Hartman, Chief of General Operations for the Bureau of Health Care Practitioner Regulation

FROM: Danielle Terrell, Executive Director, Boards of Acupuncture, Massage Therapy, Osteopathic Medicine, Speech-Language Pathology & Audiology and the Council of Licensed Midwifery

SUBJECT: Delegation of Authority

This is to advise that while I am out of the office for the days of Thursday, November 3, 2022, through Friday, November 4, 2022, Gerry Nielsen has delegated authority to serve as Acting Executive Director for the Boards of Acupuncture, Massage Therapy, Osteopathic Medicine, Speech-Language Pathology & Audiology and the Council of Licensed Midwifery. Mr. Nielsen can be reached at (850) 245-4586.

DT/js



STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: *Elizabeth Eubanks*

DATE: MAY 18 2022

DEPARTMENT OF HEALTH,
Petitioner,

v.
DIEGO HOLGUIN CESPEDES
Respondent.

DOH Case No. 202206213

VOLUNTARY RELINQUISHMENT OF LICENSE

Respondent DIEGO HOLGUIN CESPEDES, MA., license No. MA96204, hereby voluntarily relinquishes Respondent's license to practice as a Massage Therapist in the State of Florida and states follows:

1. Respondent's purpose in executing this Voluntary Relinquishment is to avoid further administrative action with respect to this cause. Respondent understands that acceptance by the Board of Massage (hereinafter the Board) of this Voluntary Relinquishment shall be construed as disciplinary action against Respondent's license pursuant to Section 456.072(1)(f), Florida Statutes. As with any disciplinary action, this relinquishment will be reported to the National Practitioner Data Bank as disciplinary action. Licensing authorities in other states may impose discipline in their jurisdiction based on discipline taken in Florida.

2. Respondent agrees to never reapply for licensure as a Massage Therapist in the State of Florida.

3. Respondent agrees to voluntarily cease practicing Massage immediately upon executing this Voluntary Relinquishment. Respondent further agrees to refrain from the

practice of Massage until such time as this Voluntary Relinquishment is presented to the Board and the Board issues a written final order in this matter.

4. In Order to expedite consideration and resolution of this action by the Board in a public meeting, Respondent, being fully advised of the consequences of so doing, hereby waives the statutory privilege of confidentiality of Section 456.073(10), Florida Statutes, regarding the complaint, the investigative report of the Department of Health, and all other information obtained pursuant to the Department's investigation in the above-styled action. By signing this waiver, Respondent understands that the record and complaint become public record and remain public record and that information is immediately accessible by the public. Respondent understands that this waiver of confidentiality is a permanent, non-revocable waiver.

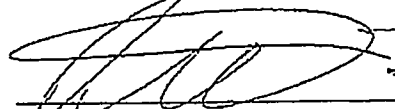
5. In order to expedite consideration and resolution of this action by the Board in a public meeting, Respondent, being fully advised of the consequences of so doing hereby waives a determination of probable cause, by the Probable Cause Panel, or the Department when appropriate, pursuant to Section 456.073(4), Florida Statutes.

6. Upon the Board's acceptance of this Voluntary Relinquishment, Respondent agrees to waive all rights to seek judicial review of, or to otherwise challenge or contest the validity of, this Voluntary Relinquishment and of the Final Order of the Board incorporating this Voluntary Relinquishment.

7. Petitioner and Respondent hereby agree that upon the Board's acceptance of this Voluntary Relinquishment, each party shall bear its own attorney's fees and costs related to the prosecution or defense of this matter.

8. Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent in connection with the Board's consideration of this Voluntary Relinquishment. Respondent agrees that consideration of this Voluntary Relinquishment and other related materials by the Board shall not prejudice or preclude the Board, or any of its members, from further participation, consideration, or resolution of these proceedings if the terms of this Voluntary Relinquishment are not accepted by the Board.

DATED this 12 day of May, 2022.

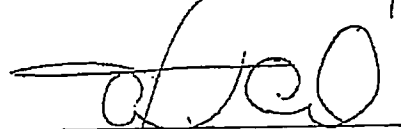


DIEGO HOLGUIN CESPEDES, MA., #No. MA96204

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Before me, personally appeared DIEGO HOLGUIN CESPEDES whose identity is known to me or who produced Florida Drivers License (type of identification) and who, under oath, acknowledges that his signature appears above.

Sworn to and subscribed before me this 12 day of May, 2022.

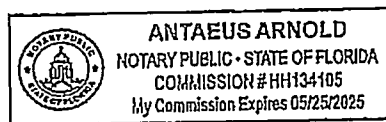


NOTARY PUBLIC

Antaeus Arnold

My Commission Expires:

5/25/2025



**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO.: 2022-06213

DIEGO HOLGUIN CESPEDES, L.M.T.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health (Department) files this Administrative Complaint before the Board of Massage Therapy (Board) against Respondent Diego Holguin Cespedes, L.M.T., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of massage therapy pursuant to section 20.43, chapter 456, and chapter 480, Florida Statutes (2021).
 2. At all times material to this Complaint, Respondent was licensed as a massage therapist in the State of Florida, having been issued license number MA 96204.
 3. At all times material to this Complaint, Respondent's address of record was 1504 Bay Road, Apartment 1623, Miami Beach, Florida 33139.
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4. At all times material to this Order, Respondent was employed as a massage therapist at Massage Envy in Miami Beach, Florida.
5. On or about November 20, 2021, Respondent provided a massage to Patient B.L., a man.
6. Respondent escorted Patient B.L. back to the massage room and told him to undress.
7. Respondent left the massage room and Patient B.L. undressed, leaving his boxer briefs and socks on.
8. Patient B.L. laid face down on the massage table and draped himself with a sheet.
9. Respondent entered the massage room, closed the door behind him, and began massaging Patient B.L.'s shoulders, neck, and back area.
10. Respondent worked his way down to Patient B.L.'s legs and hamstrings.
11. Respondent told Patient B.L. to turn over, and he complied.
12. Patient B.L. was now lying face up on the massage table.
13. Respondent massaged Patient B.L.'s shoulders and neck area.
14. Respondent worked his way down to Patient B.L.'s legs and thighs.

15. While massaging Patient B.L.'s thighs, Respondent placed his hand up into Patient B.L.'s boxer briefs from the right leg opening.

16. Respondent grabbed and/or touched Patient B.L.'s genitals and/or penis.

17. Respondent stroked and/or caressed Patient B.L.'s genitals and/or penis.

18. While Respondent touched Patient B.L.'s genitals and/or penis, Patient B.L. pushed Respondent's hand away.

19. Patient B.L. told Respondent "man, what are you doing, I don't get down like that."

20. Respondent responded by saying "I'm sorry, I'm sorry, I'm sorry," left the massage room, and closed the massage room door behind him.

21. Patient B.L. immediately got up off the massage table, dressed, and left the massage room.

22. Patient B.L. did not give Respondent permission to touch his genitals and/or penis.

23. Touching Patient B.L.'s genitals and/or penis is outside the scope of massage therapy and constitutes sexual misconduct.

24. Section 480.046(1)(p), Florida Statutes (2021) provides that a massage therapist is subject to discipline for violating any provision of this chapter, chapter 456, or any rules adopted pursuant thereto.

25. Section 480.0485, Florida Statutes (2021), prohibits sexual misconduct in the practice of massage therapy and specifically provides that:

The massage therapist-patient relationship is founded on mutual trust. Sexual misconduct in the practice of massage therapy means violation of the massage therapist-patient relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of massage therapy is prohibited.

26. Rule 64B7-26.010(1), Florida Administrative Code (2021), absolutely prohibits sexual activity by any person or persons in a massage establishment.

27. Rule 64B7-26.010(3), Florida Administrative Code (2021) provides that no licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.

28. Rule 64B7-26.010(4), Florida Administrative Code (2021) defines "sexual activity" in pertinent part as any direct or indirect physical contact

by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and explains that sexual activity is not dependent on whether penetration, orgasm, or ejaculation has occurred.

29. Respondent engaged in sexual misconduct in the practice of massage therapy by using his position as a massage therapist to induce or attempt to induce, or to engage or attempt to engage client T.E. in sexual activity outside of the scope of practice in one or more of the following ways:

- a. Touching, grabbing, and/or caressing Patient B.L.'s genitals;
and/or
- b. Touching, grabbing, and/or caressing Patient B.L.'s penis.

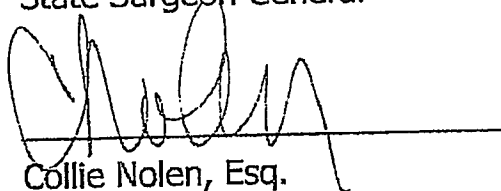
30. Based on the foregoing, Respondent violated section 480.046(1)(p), through a violation of section 480.0485 and/or Rule 64B7-26.010(1) and/or (3), Florida Administrative Code.

[SIGNATURE PAGE FOLLOWS]

WHEREFORE, Petitioner respectfully requests that the Board enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 15th day of March, 2022.

Joseph A. Ladapo, MD, PhD
State Surgeon General



Collie Nolen, Esq.
Assistant General Counsel
Department of Health
Prosecution Services Unit
Florida Bar No. 106540
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
(T) (850) 558-9891
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(E) Collie.Nolen@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Bridget Coates*
DATE: MAR 25 2022

PCP Meeting: 3/24/22
PCP Members: Drago & Whiteridge

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition any other discipline imposed.